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MEMO

From: Kenneth H. Thomas, Ph.D.

To: OCC (2013-0003), FRB (OP-1456), and FDIC

Date: May 17, 2013

Re: Comments on Proposed Revisions to CRA Interagency Q&As on CRA Dated March 18, 2013

This comment is based on my on-going analysis of CRA, some of which has been published in Community Reinvestment Performance (Probus Publishing, 1993) and The CRA Handbook (McGraw Hill, 1998). Also, the 2002 Public Policy Brief on Optimal CRA Reform (www.levy.org) contains further background on my research and recommendations for improved CRA public policy. Only a few of these recommendations are relevant to the proposed Q&A revisions, but others are of a more general nature that hopefully will be considered in the effort to continually improve CRA:

1. The entire CRA function (including regulations, examinations, ratings, enforcement, etc.) of the individual regulators should be transferred to the new Consumer Financial Protection Bureau (CFPB) to provide needed uniformity and minimize persistent CRA Grade Inflation which has been documented in my more than two decades of research on CRA.

2. The previous small lending business data requirements should be reinstated for all banks, since the elimination of data from all but the largest banks limits the usefulness of such data in studying small business lending patterns in local markets, especially non-metropolitan and rural areas where there are few big banks.

3. The regulatory agencies should adapt a High and Low Satisfactory rating for all of its performance matrices and, most importantly, for the overall state and bank ratings. Further, the "Strategic Plan" option should be eliminated.

4. The regulatory agencies and ultimately the CFPB should revisit the "shared branch" proposal and pilot test discussed in The CRA Handbook, and consider expanding this program to unbanked and under-banked markets to promote *physical* access to retail banking services by low-and moderate-income individuals.

5. Banks with Outstanding CRA ratings should be publicly highlighted in separate regulatory releases similar to the current ones on enforcement or similar adverse regulatory actions where banks are criticized. Furthermore, the heads of the agencies and ultimately the CFPB should send separate letters to the CEOs of those institutions complementing their Outstanding CRA performance. Good CRA and other corporate activities by banks that are in the public interest should be encouraged and publicized by regulators much more than is the case today.

6. With all of the fraudulent and other improper activity associated with the latest financial crisis, the regulators (and ultimately the CFPB) should require all vendors that sell CRA investments to financial institutions to register with the regulators and clearly disclose which if any of their current or past principals, owners, officers, or other key individuals associated with those vendors have been charged with any violations of any sort by the SEC. These disclosures must then be clearly made to any financial institutions with whom these vendors deal.

7. Any non-profit community group or coalition that represents itself to financial institutions as being associated with CRA or testifying to Congress in this regard must disclose whether any officers or Board members have any direct or indirect associations or relationships with for-profit vendors that sell CRA investments to financial institutions. Further, all current and past direct and indirect monetary transactions between the for-profit and non-profit entities must be fully disclosed by both entities as well as to any financial institutions with whom these entities deal. Finally, any non-profit community group or coalition that has been found to be in violation of any conflict of interest provisions by HUD or other federal agencies should likewise be required to disclose this information in any public policy papers, testimony, or similar public pronouncements as well as in contacts with financial institutions with whom they work.

8. We support CRA investments in nationwide funds and any flexibility in regulations that encourage such investments and reduce the costs associated with them such as those being proposed in the subject Q&As at this time. We further believe that the regulators should encourage additional new nationwide funds to encourage competition among them by providing additional "CRA credit" to those financial institutions that invest in such new funds and help them succeed in fulfilling their community development mandate. Conversely, the regulators should "consider the source" of comments from *existing* nationwide funds that are critical of the proposed Q&As. This is because those funds may be more concerned with protecting their dominant market position rather than lowering barriers to entry to new competing nationwide funds that would benefit from the more flexible and less costly regulations being proposed at this time. Good public policy should not only encourage public welfare activities such as community development but also increased competition among funds involved in such activities which ultimately lowers prices and raises output (i.e., the amount of community development investments).

9. We support the current and previous views of various community groups regarding the concern over possible "double-counting" of CRA activities by nationwide or regional funds. The regulators should take preventive action to ensure this does not happen, and one alternative which we have previously proposed is to require that such funds have an OUTSIDE auditor annually certify that no such double counting occurred at the subject fund during the previous year OR *at any time during its existence.* While this would require an added expense to the fund, it would be the best way to ensure actual and potential fund investors that the subject fund had never engaged in "double counting." The current self-regulation in the form of self-endorsing statements that a fund has never double counted is not enough in the current Dodd-Frank era where investors need outside auditors to verify such key information. We would further propose that in the event that ONE such case of double counting was found at any such fund, going back to the very first allowed investment in it, that this information be disclosed to current and prospective investors and all subsequent investments in that fund be denied credit until corrective action is taken.

10. We believe that the regulators should provide some *quantitative* guidelines for bankers on how many Qualified Investments (QIs) should be purchased for different Investment Test ratings for large retail banks or for Community Development Investments by Intermediate Small Banks or Special Purpose Banks such as Wholesale and Limited Purpose Banks. While there are other *qualitative* factors which would impact the final rating (e.g., investments in new nationwide funds as recommended above), we respectfully suggest the following numerical guidelines from The CRA Handbook be considered:

Community Development Investment or Investment Test Rating Guidelines	**QIs to Assets**
Outstanding	1.00% or more
High Satisfactory	.66 - .99%
Low Satisfactory	.26 - .65%
Needs to Improve	.11 - .25%
Substantial Noncompliance	0 - .10%

Source: The CRA Handbook (McGraw Hill, 1998)